

Appeal Decision

Site visit made on 7 September 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

APP/V4250/X/21/3289807

3 Grantley Street, Ashton-In-Makerfield, Wigan WN4 9UY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by Wigan Metropolitan Borough Council to grant a certificate of lawful use or development.
- The appeal was made by Ms Anne Hurkes.
- The application, reference A/21/92309/LUCP, was dated 23 August 2021 and received by the Council on 24 September 2021. It was refused by a notice dated 19 November 2021.
- The certificate of lawfulness or development sought was: "To use domestic garden building as dog grooming salon", (description in Planning Statement dated 23 August 2021 accompanying the application).
- The Application was made under section 192(1)(a) of the Act for a certificate of lawfulness for use of the existing detached outbuilding to be used as a dog grooming salon at 3 Grantley Street, Ashton-In-Makerfield, Wigan WN4 9UY.

Summary of decision: A certificate of lawfulness is not issued.

Appeal property and application

1. The appeal property, No. 3 Grantley Street, Ashton-In-Makerfield, is a semi-detached house with front and rear gardens in a street of similar houses. A gated vehicular access to a service area at the rear of No. 3 is available from Harold Avenue to the north-west. This area is enclosed by the rear gardens of houses in Grantley Street, Harold Avenue, Wentworth Road and Hardwick Road.
2. The application for a certificate of lawfulness concerns the proposed use of the small timber building at the end of the rear garden of No. 3 Grantley Street by the Appellant, Ms Anne Hurkes, as a dog grooming salon.

Appellant's case

3. Ms Hurkes wishes to work part-time as a dog-groomer. She sought a certificate of lawfulness or development for the end of the rear garden outbuilding to be used as a dog grooming salon. Ms Hurkes said it would be a use incidental to the enjoyment of a dwellinghouse. What was suggested was that her business activity was to be on such a small scale that no definable change in the character of the residential use would occur and that therefore there would be no material change of use of the land.

4. Ms Hurkes and her partner would continue to occupy No. 3 as their principal dwelling. There would be a separation between the use of No. 3 as their home and the operation of the enterprise. Clients would be directed to use the alley gate in Harold Avenue which allowed vehicular access to the communal service area and the rear garden gate of No. 3. There would be a clear separation between residential use and business use. That might suggest the creation of a separate planning unit had the intensity of the intended use been much greater. But that would not be the case here.
5. The character of the use would be similar to how the building might be used if an occupant were to have a hobby related to the showing of animals. The equipment used and the amount of activity would be similar. The proposed business use would remain "reasonably incidental to the use of the dwelling house as such". No material change of use would take place.
6. The Appellant and her partner were disabled. Section 149(1)(b) of the Equality Act 2010 requires public authorities, amongst other things, to have regard to the need to "advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it". It was a requirement for a local planning authority to have due regard to public sector equality duty when deciding individual planning applications.

Council's case

7. The Council said the dog grooming business would not appear to be incidental to the residential use of the property. It would form an independent new business use within the curtilage of a residential property.
8. If the proposed use was for the sole benefit of the occupier's pet, it could be an ancillary or incidental use to the dwelling. But the planning statement said clients would visit the site for the dog grooming service, using a separate access at the rear of the property. The occupier of No. 3 could groom her own pets within the outbuilding. But the setup proposed was also for the benefit of others' dogs. The use would not be ancillary to the incidental enjoyment of the host dwelling. It would result in a noticeable change in the way the outbuilding was used compared to the main dwelling. It would result in a material change of use from Use Class C3 residential.

Inspector's considerations

9. The lawful development certificate application is: "To use domestic garden building as dog grooming salon.". The Cambridge dictionary describes a salon, (other than a meeting for e.g. writers), as a shop where you can get a particular service, especially connected with beauty or fashion – a reasonably understood expression in this instance.
10. Taken on its plain reading, this application is asking for confirmation that a dog grooming business use of the rear garden timber building on an undefined scale would be lawful as part of the lawful residential use of the dwellinghouse at No. 3 Grantley Street. It would not. It could only be lawful if the dog grooming use of the building and its associated activity was shown to be "de minimus", meaning too small to be meaningful or taken

into consideration. There would be no purpose to such an application, even if it could be clearly defined.

11. The Appellant asks for a lawful development certificate to say her dog grooming business, to be carried out in the detached garden building, would be on such a limited and inconsequential scale that it should be considered to be incidental to the enjoyment of the dwellinghouse as such, (*Class E.(a) Schedule 2 Part 1 The Town and Country Planning (General Permitted Development) (England) Order 2015*). However, a commercial dog grooming business use especially where the scale of the use was not defined in the wording of the certificate application would be of a quite different character to the normal residential occupation of the dwellinghouse. The use of the words "to be used as a dog grooming salon" implies, as is in fact the case, that this would be a business use on a scale that could not be limited, as conditions cannot be imposed upon a lawful development certificate
12. Ms Hurkes proposal would amount to a material change of use of the land and buildings to a new mixed use of residential and dog grooming, even if the dog grooming element were substantially subordinate to the residential use. It would require planning permission.
13. Much of the representations put forward dealt with amenity issues, the personal circumstances of the Appellant and the benefits of working from home. However, the certificate of lawfulness or development procedure is not concerned with the planning merits of the case as there is no planning application and no conditions can be added to a certificate of lawfulness. The appeal fails.

FORMAL DECISION

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the use of existing detached outbuilding to be used as a dog grooming salon at No. 3 Grantley Street, Ashton-In-Makerfield, Wigan WN4 9UY was well founded and that the appeal should fail. I exercise the powers transferred to me by s.195(3) of the Act accordingly.

John Whalley

INSPECTOR